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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/650,083	08/28/2003	Takeshi Oohori	050374-0106	7221

22428 7590 05/24/2005

FOLEY AND LARDNER
SUITE 500
3000 K STREET NW
WASHINGTON, DC 20007

EXAMINER

GIBSON, ERIC M

ART UNIT	PAPER NUMBER
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3661

DATE MAILED: 05/24/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/650,083	Applicant(s) OOHORI ET AL.	
	Examiner Eric M Gibson	Art Unit 3661	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 06 April 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1 and 7-14 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1 and 7-14 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 06 April 2005 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

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DETAILED ACTION

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

1. Claims 1 and 7-14 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

a. Per independent claims 1, 9, and 10, the recitation of "and/or" in the claims renders them indefinite because it is not known what limitations are included in the invention.

b. Claims 7, 8, and 11-14 are necessarily rejected as being dependent upon a rejected base claim.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation

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under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

2. Claims 1 and 7-14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Abe et al. (US005433676A) in view of Yasue et al. (US004819187A).

a. Per claim 1, Abe teaches a torque control apparatus for an engine and automatic transmission that includes a detection device which detects an operating state of the transmission (column 12, lines 14-17), a torque regulating mechanism which regulates a torque of the engine (column 12, lines 10-14), and a controller which functions to make a selection, based on the operating state of the transmission, between a first torque reduction control whereby the torque of the engine is reduced rapidly and temporarily, and a second torque reduction control whereby the torque of the engine is reduced continuously, and more smoothly than the first torque reduction control, and reduce the torque of the engine by the selected one of the first torque reduction control and the second torque reduction control (column 31, lines 40-59). Abe further teaches that the system switches to the second torque reduction control when the first torque reduction control continues for a predetermined time (column 31, lines 40-48). However, while Abe teaches that torque reduction can be accomplished by retarding ignition timing, intake volume, or fuel cut control (column 18, lines 43-46), no specific mention is made of reducing an engine air intake amount as a method of torque reduction. There exist several different methods of reducing torque in a vehicle engine

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in the prior art, each with inherent advantages and disadvantages. Reducing an engine air intake amount is one of many such known methods of torque reduction. Yasue describes several different torque reduction control methods in the background of the invention (see columns 1-2) and specifically teaches utilizing a combination of reduction of fuel supply and reduction in intake air rate in order to control the torque reduction (column 15, line 62 – column 16, line 4), in order to minimize the likelihood of misfire. It would have been obvious to one of ordinary skill in the art, at the time of invention, to utilize a known method of torque reduction by reducing an engine air intake amount, as is known in the art, as one of many different alternatives for torque reduction, as is evidenced in the teaching of Yasue for example, to reduce the likelihood of misfires.

b. Per claims 7 and 8, Abe teaches that the amount of torque reduction is based on the torque input to the transmission (column 28, line 65 – column 29, line 4).

c. Per claim 9, Abe teaches a torque control apparatus for an engine and automatic transmission that includes a means for detecting an operating state of the transmission (column 12, lines 14-17), means for regulating a torque of the engine (column 12, lines 10-14), and means for making a selection, based on the operating state of the transmission, between a first torque reduction control whereby the torque of the engine is reduced rapidly and temporarily, and a second torque reduction control whereby the torque of the engine is reduced continuously, and more smoothly than the first torque reduction control, and reduce the torque of the engine by the selected one of the first torque reduction control and the second torque reduction control (column 31, lines 40-59). Abe further teaches that the system switches to the second torque

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reduction control when the first torque reduction control continues for a predetermined time (column 31, lines 40-48). However, while Abe teaches that torque reduction can be accomplished by retarding ignition timing, intake volume, or fuel cut control (column 18, lines 43-46), no specific mention is made of reducing an engine air intake amount as a method of torque reduction. There exist several different methods of reducing torque in a vehicle engine in the prior art, each with inherent advantages and disadvantages. Reducing an engine air intake amount is one of many such known methods of torque reduction. Yasue describes several different torque reduction control methods in the background of the invention (see columns 1-2) and specifically teaches utilizing a combination of reduction of fuel supply and reduction in intake air rate in order to control the torque reduction (column 15, line 62 – column 16, line 4), in order to minimize the likelihood of misfire. It would have been obvious to one of ordinary skill in the art, at the time of invention, to utilize a known method of torque reduction by reducing an engine air intake amount, as is known in the art, as one of many different alternatives for torque reduction, as is evidenced in the teaching of Yasue for example, to reduce the likelihood of misfires.

d. Per claim 10, Abe teaches a torque control method for an engine and automatic transmission that includes detecting an operating state of the transmission (column 12, lines 14-17), regulating a torque of the engine (column 12, lines 10-14), and making a selection, based on the operating state of the transmission, between a first torque reduction control whereby the torque of the engine is reduced rapidly and temporarily, and a second torque reduction control whereby the torque of the engine is

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reduced continuously, and more smoothly than the first torque reduction control, and reduce the torque of the engine by the selected one of the first torque reduction control and the second torque reduction control (column 31, lines 40-59). Abe further teaches that the system switches to the second torque reduction control when the first torque reduction control continues for a predetermined time (column 31, lines 40-48).

However, while Abe teaches that torque reduction can be accomplished by retarding ignition timing, intake volume, or fuel cut control (column 18, lines 43-46), no specific mention is made of reducing an engine air intake amount as a method of torque reduction. There exist several different methods of reducing torque in a vehicle engine in the prior art, each with inherent advantages and disadvantages. Reducing an engine air intake amount is one of many such known methods of torque reduction. Yasue describes several different torque reduction control methods in the background of the invention (see columns 1-2) and specifically teaches utilizing a combination of reduction of fuel supply and reduction in intake air rate in order to control the torque reduction (column 15, line 62 – column 16, line 4), in order to minimize the likelihood of misfire. It would have been obvious to one of ordinary skill in the art, at the time of invention, to utilize a known method of torque reduction by reducing an engine air intake amount, as is known in the art, as one of many different alternatives for torque reduction, as is evidenced in the teaching of Yasue for example, to reduce the likelihood of misfires.

e. Per claims 11-14, Abe teaches the invention as explained in the rejection of claims 9 and 10. Abe further teaches that the amount of torque reduction is based on the torque input to the transmission (column 28, line 65 – column 29, line 4).

Response to Arguments

3. Applicant's arguments with respect to claims 1 and 7-14 have been considered but are moot in view of the new ground(s) of rejection.

a. Specifically, the additional limitations added that specify the method of torque reduction are not considered to render the claims non-obvious over the teaching of the prior art as explained in the above rejections. Reducing the engine air intake amount is a well-known method of torque reduction.

Conclusion

4. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

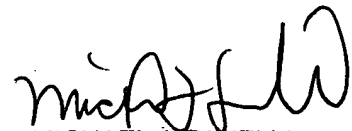
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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Eric M Gibson whose telephone number is (571) 272-6960. The examiner can normally be reached on M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thomas Black can be reached on (571) 272-6956. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

EMG


MICHAEL J. ZANELLI
PRIMARY EXAMINER